APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1793

WINFIELD L. ROBERTS, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petition For Certiorari Filed May 30, 1979.
Certiorari Granted October 1, 1979.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

APPENDIX

United States District Court For The District Of Columbia

United States of America

v. Crim. No. 75-619

1. Charles J. Thornton a/k/a Boo

2. Winfield L. Roberts a/k/a Win

RELEVANT DOCKET ENTRIES

Mar. 20, 1978 #2: Plea not guilty withdrawn; Plea Guilty To Counts 2 and 5 (unlawful Use of Communication Facility, 21 U.S.C. 843(b)); referred; bond.
Govt. reserved right to allocute.
Rep: D. Bossard Pratt, J.

Mar. 28, 1978 #2: Motion For the Court to Recuse itself from sentencing deft. or in the alternative to make the sentences on counts 2 and 5 concurrent with each other.

April 6, 1978 #2: Opposition of Govt. To Motion for the court to recuse itself from sentencing the deft. or in the alternative to make the sentences on counts 2 and 5 concurrent with each other.

April 19, 1978 #2: Memorandum of Govt. on Sentencing. c/s

April 21, 1978 #2: Sentence: Count 2, one year to four years, Count 5, one year to four years, said sentence to run consecutively, plus 3 years Special parole, Sentence to be served in a Federal Institution, Remaining counts dismissed.
Deft committed Commitment issued.
Rep. D. Bossard Pratt, J.

[TITLE OMITTED IN PRINTING]

MOTION FOR THE COURT TO RECUSE ITSELF FROM SENTENCING THE DEFENDANT OR, IN THE ALTERNATIVE, TO MAKE THE SENTENCES ON COUNTS 2 AND 5 CONCURRENT WITH EACH OTHER

I.

For the reasons stated in both our motion to have the court recuse itself and the petition for a writ of mandamus or prohibition, we respectfully move the Court to recuse itself from sentencing the defendant upon his guilty pleas herein.

II.

Count 1 of the indictment charges the defendant and Charles "Boo" Thornton with a conspiracy to violate the federal narcotic laws pertaining to heroin. (21 U.S.C. §846). Overt acts 1-4, in support thereof, allege use of a communication facility, *i.e.*, a telephone, to further the objects of that conspiracy. It was conceded at the time the plea was taken on March 20, 1978, to substantive counts 2 and 5, that those counts are precisely the same as overt acts 1 and 4 respectively. Since the gist of a conspiracy is a criminal agreement or partnership, it is our contention that, as a matter of law, consecutive sentences cannot be meted out for violations of counts 2 and 5 which reflect acts in furtherance of the conspiracy and which were an integral part of but a single criminal enterprise or scheme. If we are incorrect in this, then the Govern-

ment could have charged the defendant with each of the 50 or more alleged phone calls, *i.e.*, 50 substantive phone counts, and the defendant would have faced a maximum liability of 15 years on the primary conspiracy charge and over 200 years on the charges which but breathed life into that conspiracy—an intolerable result we submit. In commenting on the rule of lenity, Judge Leventhal observed the following for the Court *en banc*:

> "Obviously there is a need to be careful to prevent injustice when what is essentially a single course of conduct may be prosecuted as more than one offense, under more than one statutory provision. Such injustice is obviated by the rule prohibiting the imposition of consecutive sentences, in appropriate cases, even when the defendant has committed two or more legally distinct offenses." *Fuller v. United States*, 132 U.S. App. D.C. 264, 289, 407 F.2d 1199, 1224 (1968).

Although this approach clearly mandates concurrent sentences in the case at bar, our research has revealed no case in this circuit or any other circuit which has specifically addressed this question.

We would further note that, in our experience, were this case in court for the first time with no prior sentencing history, we would expect the sentencing Judge to impose concurrent sentences *upon the guilty pleas*—indeed, we regard this as common practice in this courthouse. Therefore, we urge that the Court's prior sentence upon the defendant's prior plea not affect what would be the normal sentencing procedure at present.

Furthermore, we know of no case in this jurisdiction where consecutive sentences were imposed for violations

of 21 U.S.C. §843(b) (counts 2 and 5) and we have found no appellate opinion from any circuit wherein telephone counts resulted in anything but concurrent sentences as a matter of fact. See, *e.g.*, *United States v. Losing*, 560 F.2d 906 (8th Cir. 1977).

Accordingly, we respectfully urge that the sentences herein or counts 2 and 5 be concurrent.[1]

Respectfully submitted,

ALLAN M. PALMER
1707 N Street, N.W.
Washington, D.C. 20036
785-1250

[CERTIFICATE OF SERVICE OMITTED]

[TITLE OMITTED IN PRINTING]

GOVERNMENT'S OPPOSITION TO MOTION FOR THE COURT TO RECUSE ITSELF FROM SENTENCING THE DEFENDANT, OR, IN THE ALTERNATIVE TO MAKE THE SENTENCES ON COUNTS TWO AND FIVE CONCURRENT WITH EACH OTHER

The United States of America, by its attorney, the United States Attorney for the District of Columbia, respectfully opposes the defendant's motion on the following grounds:

---

[1] If concurrent sentences are imposed, we specifically abandon argument I, *supra*, after consultation with and consent of the defendant.

I.

Both sides have previously filed written memoranda addressed to the recusal issue. We adopt our previous arguments and urge the Court to reaffirm its earlier decision not to recuse itself.

II.

The defendant argues that consecutive sentences cannot be imposed on his factual plea of guilty to counts two and five of the indictment because they "were an integral part of but a single criminal enterprise or scheme" (Defendant's motion at 1). We submit that his contention is erroneous and flies in the face of settled law.

Counts Two and Five both allege violations of 21 U.S.C. 843(b) (unlawful use of a telephone to violate the Controlled Substances Act). Count Two alleges that the phone was used on March 10, 1975, while Count Five alleges its use on March 16. The conspiracy count of the indictment (Count One), which will be dismissed at sentencing, alleged an unlawful agreement to violate 21 U.S.C. 841(a), the unlawful distribution and possession with intent to distribute heroin.

It is clear that each of the thirteen (13) completed calls between Roberts and Charles "Boo" Thornton could have been charged as separate and distinct offenses. *Katz v. United States*, 369 F.2d 130, 135 (9th Cir. 1966), *rev'd on other grounds*, 389 U.S. 347. Consequently, consecutive sentences would have been permissible.

The leading case on consecutive sentences, which the

defendant overlooks, is *Blockburger v. United States*, 284 U.S. 299 (1932). There the defendant was convicted of three offenses arising from his sale of morphine to the same purchaser on two separate days. The Court found that even though the purchaser was the same on each of the two days, and the two sales occurred only hours apart, that each sale constituted a separate offense under the Harrison Narcotic Act. The Court affirmed the imposition of *consecutive five year sentences on each count even though the second and third counts related to the same sale* (the second involved morphine not in the original stamped package while the third charged that the sale was not made in pursuance of a written order). Notwithstanding that the two sales were suggestive of a continuing scheme or plan, the Court found that each sale was a separate and distinct offense permitting the imposition of consecutive sentences. If the sales of narcotics on separate days are subject to consecutive punishment, logic requires the same conclusion for the use of a telephone on separate days. We submit that the reasoning and holding of *Blockburger* controls the instant case.

It is also indisputable that had Roberts gone to trial and been convicted of the conspiracy charge and the four substantive telephone offenses that he could have received *consecutive* sentences. The law is well settled that a court may impose consecutive sentences for conspiracy to commit a crime and its later accomplishment because conspiracy requires proof of agreement to commit a crime, but no proof of attempt, and the substantive violation requires the latter, but not the former. *See, e.g., Curtis v. United States*, 546 F.2d 1188, 1190 (5th Cir. 1977) (sustaining separate sentences for conspiracy to violate narcotics laws and substantive violations); *Nolan v. United States*, 423

F.2d 1031 (10th Cir. 1969), *cert. denied*, 400 U.S. 848 ( ) (consecutive sentences for illegal use of telephone (18 U.S.C. 1952) and conspiracy to violate 1952 proper); *Tolliver v. United States*, 224 F.2d 742 (9th Cir. 1955) (an accused can properly be convicted of both conspiracy to violate narcotics laws and substantive narcotics violations even though the overt act of the conspiracy might also have been an offense which was one of the substantive counts; the offenses are not identical).[1]

WHEREFORE, we respectfully submit that the defendant's motion should be denied.

Respectfully submitted,

EARL J. SILBERT
United States Attorney

DONALD E. CAMPBELL
Assistant United States Attorney
Chief, Major Crimes Division

JOSEPH F. McSORLEY
Assistant United States Attorney
Major Crimes Division
426-7389

[1]We are aware, of course, that where several statutory violations constitute only a single offense, only one punishment is proper. This is known as the "merger of offenses doctrine" and its use is most vividly seen in bank robbery cases where an accused is convicted of both bank robbery and entry of a bank with an intent to commit a felony. In *Prince v. United States*, 352 U.S. 322 (1957), the Supreme Court held that the latter crime merged into the former, and only one punishment was appropriate. In the instant case, however, as we have already shown, Roberts used the telephone on two separate days and thus committed two separately punishable offenses, analogous to the *Blockburger* case of two separate narcotic sales.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Government Opposition has been mailed to attorney for defendant, Allan M. Palmer, 1707 N Street, Northwest, Washington, D.C. 20036 this 6th day of April, 1978.

JOSEPH F. McSORELY
Assistant United States Attorney
Major Crimes Division
426 7389

[CAPTION OMITTED IN PRINTING]

GOVERNMENT MEMORANDUM ON SENTENCING

The United States of America has filed this sentencing memorandum in support of our request that the Court impose a substantial sentence of imprisonment, and a substantial fine, on Winfield L. Roberts, the defendant herein, a supplier of narcotic drugs.

For the convenience of the Court and counsel, we have attached a Table of Contents.

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[CAPTION OMITTED IN PRINTING]

GOVERNMENT MEMORANDUM ON SENTENCING

The United States of America, by its attorney, the United States Attorney for the District of Columbia, pursuant to 18 U.S. Code, 3577, 23 D.C. Code 103 and *Quarles v. United States*, D.C. Ct. App. No. 8759, decided December 31, 1975, and other authorities cited herein, hereby informs the Court that the Government will exercise its right of allocution at the sentencing of the defendant, Winfield L. Roberts. We will recommend that the defendant be sentenced to a substantial term of imprisonment and a substantial fine pursuant to his plea of guilty to 21 U.S. Code 846 which provides for up to fifteen (15) years imprisonment and a $25,000 fine.

The basis for our recommendation is the following information concerning the defendant's criminal record

and other background material which has been assembled by the Major Crimes Division of the United States Attorneys Office and the Narcotics Squad of the Metropolitan Police Department. We respectfully submit that this material, considered together with the facts of the crime for which the defendant is to be sentenced, warrants the imposition of a substantial sentence.

A. Function of the Major Crimes Division

Preliminarily, we think it is germane to state the purpose of the Major Crimes Division (MCD). The MCD's primary function involves the investigation and prosecution of *major organized crime figures and/or major criminal operations* in the District of Columbia. Its cases are brought in both the Superior Court and the District Court. The Division's caseload is selective rather than voluminous. Its focus is on major criminal figures and the immobilization of significant criminal operations, particularly in the areas of narcotics, gambling and fencing.[1] This, of course, necessitates the coordinated, concentrated, intense efforts not only of presecutors but of many investigative agencies, both federal and local.

With respect to narcotics operations, it has been the practice of MCD initially to identify a lucrative narcotics trafficking enterprise and its hierarchical struc-

[1] MCD is the section of the United States Attorneys Office which handled the legal investigation in "Operation Sting" which thus far has resulted in the arrests of over 100 defendants and the receiving of more than $2.4 million in stolen property.

ture, learn the identities and activities of its principals, and then to proceed to target certain of those individuals for surveillance and investigation. The investigative means often include electronic as well as physical surveillance. Extensive use is made of special grand juries which are empaneled for eighteen months. In addition, undercover probes are utilized as frequently as possible since such enterprises are generally more easily penetrable from the "inside" than from the "outside." In the instant matter wiretaps and an undercover officer were both employed with great success.

Because major criminal figures are usually very suspicious, canny and circumspect, the more important the offender's role in the enterprise, the less susceptible he is to arrest and prosecution. Such figures tend to erect, maintain and control criminal structures which provide them great insulation from detection and arrest. In cases such as this, where the essence of the offense is a conspiracy, court-authorized wiretaps are invaluable investigative aids.

B. Purpose of this Allocution

We propose by this written allocution to inform the Court fully of the background of Winfield L. Roberts in the field of narcotics trafficking so that in discharging its sentencing function the Court will possess the fullest information possible on which to make an informed judgment. We believe that the contents of this allocution, combined with the overwhelming evidence of guilt as shown by the taped conversations of Roberts and his co-conspirator, Charles "Boo" Thornton (who is sched-

uled to be tried on April 20 before the Honorable Howard F. Corcoran) and Roberts' confession, amply warrant the imposition of a substantial term of imprisonment and a substantial fine.

C. Information Which May Properly be Considered by a Sentencing Judge

It is axiomatic that a sentencing judge may consider a wide variety of information as to a defendant's background, character, and conduct, criminal and otherwise, in imposing a sentence. The Supreme Court has consistently held that even acts and conduct *not* resulting in convictions may properly be considered. *See Williams v. New York*, 337 U.S. 241, 246-247 (1948) (it was proper for the trial judge to have considered evidence of 30 other burglaries believed to have been committed by the defendant); *Williams v. Oklahoma*, 358 U.S. 576 (1959) (the sentencing judge may consider hearsay information which is relevant to the crime and the defendant's life); *United States v. Majors*, 490 F.2d 1321 (9th Cir. 1974) (a trial judge can properly consider prior arrests and indictments not resulting in convictions); *United States v. Sweig*, 454 F.2d 181 (2nd Cir. 1972) (the sentence was affirmed where it was based on information not contained in the pre-sentence report which included evidence of offenses for which the defendant was *acquitted*).

Moreover, 18 U.S. Code 3577 provides:

> No limitation shall be placed on the information concerning the background, character and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

As stated by the Court in *Williams v. New York, supra*, 337 U.S. at 247:

> A sentencing judge . . . is not confined to the narrow issue of guilt. His task . . . is to determine the type and extent of punishment after the issue of guilt has been determined Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.

D. Background of the Case

In December 1974 the Postal Inspectors Office notified the Metropolitan Police Department of suspected large-scale narcotics trafficking by postal employees and others. The Narcotics Squad thereafter inserted an undercover policewoman in the Main Post Office to attempt to unearth whatever illegal narcotic activity existed. Before very long a number of suspects had been identified. Working her way upward by ingratiating herself with certain of the suspects by buying large amounts of heroin (the purchases ranged from $65.00 to $1,400.00), the undercover officer (U/C) eventually came to meet Fletcher Bush, also known as Dutchie, and Elaine Dorsey. She was rebuffed, however, in her efforts to locate their supplier. Amassing all the information they had gathered, application was made to the Honorable George L. Hart, Jr., for a wire intercept on the telephone numbered 678-1091, listed at 3044 Stanton Road, which was

believed to be the telephone of Benjamin T. Thornton, a previously convicted narcotics felon.[2]

1. The Wiretap

The wiretap was operational for a period of fifteen (15) days (March 4-18, 1975). It resulted in the interception of about 585 completed calls (*viz.* where conversations occurred between the caller and the callee). Calls of both a gambling and narcotic-related nature were intercepted. The instant case was one of four indictments spawned by the wiretap. This is the first indictment to reach a finding or verdict.

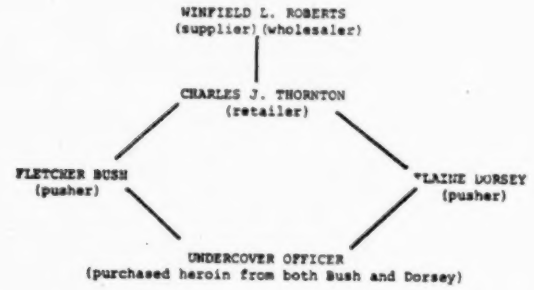
Among the calls intercepted were those between Winfield L. Roberts (who identifies himself as Win) and Charles Thornton (identified as Boo). The conversations were clearly narcotic-related. Various code words were used by the speakers to attempt to disguise the subject matter of their calls, e.g., "tighten it up" (improve the quality of the heroin, it's too weak), "I need a little something" (the speaker wants heroin), "boy" ("boy" refers to heroin, "girl" to cocaine), "meet ya on the same street" ("street" means a $100.00 bag of heroin—one spoon), and "half-street" (a $50.00 bag).

All of the intercepted conversations between Roberts and Thornton resulted from calls placed by Roberts to Thornton. These conversations establish beyond any doubt that Roberts was Thornton's supplier. We invite

[2] As the police were subsequently to learn, this was the residence of Benjamin's brother, Charles "Boo" Thornton, himself a previously convicted narcotics felon.

the Court's attention to the attached transcripts of the Win-to-Boo calls, including calls of the accomplices Dutchie and Elaine.[3]

A chart of the conspirators in this investigation and their roles would look like this:



2. The Confession

When it was finally learned just who "Win" was, he was asked to come into the United States Attorneys Office. He was advised of his rights, was told of the existence of the tap, was told that we were desirous of obtaining his cooperation in testifying against Thornton, and that the nature and extent of his cooperation would be determinative of the charges which could be brought against him.[4]

Roberts admitted that he was the one whose conversations with Thornton had been intercepted and that he had used his girlfriend's (Cecilia Payne) Jaguar to

[3] After their arrests in connection with this case, Dutchie and Elaine agreed to cooperate and testify for the Government against Boo Thornton. Each testified before the Grand Jury and each later pleaded to a narcotics felony. Both are currently on probation. During the entire conspiracy they never had any dealings with Roberts. Their role can accurately be described as Boo's "pushers."

[4] At the *Miranda* suppression hearing, Judge Corcoran found that there was a voluntary, intelligent and knowing waiver of rights.

deliver the drugs to Thornton's apartment. He also said that "street" referred to a $100.00 bag of heroin and "half-street" to a $50.00 bag.

Roberts declined to testify against Thornton and refused to name his supplier of narcotics. Accordingly, he was arrested and indicted.

Together with the surveillances which identified Roberts and the Jaguar as arriving at Thornton's apartment shortly after certain drug-related conversations, the wiretap and the confession amounted to very strong evidence of guilt.

E. Background of the Defendant

Roberts will soon be 32 years old. He is single, unemployed and attends Federal City College. As far as we know, he has no disabling injuries or sicknesses and is employable.

In 1968 Roberts and three others were convicted of eleven (11) counts of an indictment: unauthorized use of a vehicle (one count), federal bank robbery (5 counts), and local bank robbery (5 counts) (22 D.C. Code 2204, 18 U.S. Code 2113, 22 D.C. Code 2901 respectively). The conviction was the subject of a written opinion by the Court of Appeals: *Earl Coleman, et al. v. United States*, 137 U.S. App. D.C. 48, 420 F.2d 616 (1969). Roberts was sentenced to one (1) to five (5) years on the unauthorized use of a vehicle charge and five (5) to fifteen (15) years on the bank robbery charges, the sentences to run concurrently. He is currently on parole until February 1983.

One of the most interesting facts to consider about Roberts is his source of income. It is somewhat ironic

that a man who has been unemployed since he was released from prison several years ago manages to squire heroin about in a 1973 Jaguar automobile.[5] Rarely have narcotic drugs been transported in such style. Roberts, who is without any visible means of support, nonetheless manages to dress in very expensive attire. Moreover, he manages to have sufficient funds to have retained Mr. Sacks as his attorney. Roberts is living proof that sometimes it pays to be poor.

It is clear from the investigation that the source of Roberts' income is trafficking in heroin. He has profited from supplying heroin to Charles Thornton.[6] While industries may pollute the atmosphere and our water by the dumping of chemical wastes, Roberts' activities resulted in the pollution of people of this city. And his motive was clear: money. He himself is not an addict, yet addicts are his prey and people like him feed their insatiable habits.

What is even more reprehensible to consider is that he has no real need for money—no wife or children to support, no house repairs, no exorbitant medical bills, etc. . . . He pays little tuition at Federal City College.

[5]The automobile is listed in the name of Roberts' girlfriend, Cecilia Payne of 4300 Vermillion Avenue, Oxon Hill, Maryland. Miss Payne is a Government employee who earns about $12,000 a year by her own admission, who owns the Jaguar which cost her $6,650 to purchase in late 1974 and who lives in a rent-subsidized apartment.

[6]We have no evidence of whether he supplied anyone other than Thornton. The wiretap conversations of Roberts revealed him to be a man of few words who was not given to talk freely about his clientele.

He drives his girlfriend's Jaguar. He appears to live with her at her apartment. In short, it is people like Roberts' who are so avaricious that they don't know when to leave well-enough alone.

Previously convicted felons who work their way through college by supplying heroin on-call have abused the concept of parole and are deserving of stern treatment.[7]

F. The Government's Recommendation

The United States Attorney's Office does not often file a written allocution. When we do, we do not do it lightly or unthinkingly because sentencing is obviously one of the most important parts of the criminal process—important to both the community and the offender. Having invested thousands of man-hours and thousands of dollars in this entire investigation, we believe we have obtained reliable and accurate information about this narcotics conspiracy and its co-conspirators, including Roberts—the main supplier—which can be extremely useful to the Court in determining the appropriate sentence. We strongly believe that this is an appropriate case and an appropriate offender where a written allocution can bring to

[7]We believe that one who pleads guilty prior to trial is entitled to some favorable consideration because of savings of judicial economy. This does not mean, of course, that one who goes to trial should be penalized if convicted merely for exercising a constitutional perogative and we have never known any court to hold such a view.

the Court facts it may not otherwise obtain.[8]

As we noted at the outset, we recommend a substantial sentence of incarceration and a fine. In attempting to balance the needs of society against the needs of Roberts, we have considered the common aims of punishment: rehabilitation, deterrence, and the protection of society. Roberts already has had the experience of rehabilitation within the confines of a prison. In fact, one of his comments during his confession was that he met Thornton while they were together at Lorton. The most his stay at Lorton seems to have accomplished was to divert Roberts from violent crime (bank robbery) to the surreptitious, shadowy type crime of conspiring to distribute narcotics.

As for deterrence, we firmly believe that while jail is not a panacea for all the ills of society, that where a major drug dealer is convicted a substantial term of incarceration and fine does have an impact that reverberates throughout the city and makes people think twice before engaging in a narcotics enterprise. As with many other things in life, deterrence is difficult to accurately gauge or measure. But we know from experience that many criminals often boast of beating the system by getting free lawyers, free appeals, lenient sentences and short prison stays. Stern and stiff punishment of a dealer—as opposed to a "user":—is a very useful way of putting people on notice that such crimes will not pay.

[8] Even the diligent and conscientious members of the Probation Office could not be expected to be in possession of much of the material disclosed in this allocution since their contact with the offense and Roberts is much briefer than that of the officers who were the primary investigators.

Lastly, this is the type of offender who is just as much, if not more, of a danger to the community than an armed robber. His methods are more insidious and cunning. We think it fair to state that narcotics, particularly heroin, wreak havoc on the lives of those it touches. Its cost in human life and misery is incalculable. Society needs to be protected from men such as Roberts who show so little regard for the health and welfare of its citizens.

Respectfully submitted,

EARL J. SILBERT
United States Attorney

DONALD E. CAMPBELL
Assistant U.S. Attorney
Chief, Major Crimes Division

JOSEPH F. McSORLEY
Assistant U.S. Attorney
Major Crimes Division
Telephone 426-7389

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Government motion has been mailed/hand-delivered to Fred Sacks, Esquire, 1030 15th Street, Northwest, Washington, D.C., this 25th day of March, 1976.

JOSEPH F. McSORLEY
Assistant U.S. Attorney
Major Crimes Division
Telephone 426-7389

[CAPTION OMITTED IN PRINTING]

GOVERNMENT'S MEMORANDUM ON SENTENCING

The United States of America, by its attorney, the United States Attorney for the District of Columbia, respectfully submits the following memorandum as an aid to the Court in passing sentence.

I. BACKGROUND

Winfield Roberts first pleaded guilty (Alford) in this case to conspiracy to violate the Controlled Substances Act in March 1976. This Court sentenced him to four (4) to fifteen (15) years, a special parole term of three (3) years, a $5,000 fine, and recommended incarceration at Atlanta Federal Penitentiary

In December 1977 the D.C. Circuit Court of Appeals reversed Roberts' conviction for reasons set forth in a lengthy opinion and remanded the case. On January 26, 1978, this Court released Mr. Roberts on a $5,000 bond to enable him to prepare his defense.

On March 20, 1979, Mr. Roberts entered a factual plea of guilty to Counts Two and Five of the indictment, both of which allege unlawful use of the telephone to facilitate the distribution of heroin. The Government retained the unconditional right to allocute and Mr. Roberts was released on bond pending sentencing.

II. SENTENCING RECOMMENDATION

It is the Government's recommendation, for reasons previously discussed in our written sentencing allocution filed prior to the first sentence–his prior criminal record, his culpability as the supplier for Charles "Boo" Thornton, etc.–that maximum consecutive sentences be imposed.

For the reasons previously noted in our opposition motion opposing recusal and making the sentences concurrent (filed April 6, 1978), we maintain that the Court can properly impose *consecutive* sentences. Accordingly, we respectfully request the Court to impose the following sentence:

A. *Imprisonment and Fine*

1. On Count Two 16 to 48 months and a fine of $5,000.
2. On Count Five, 16 to 48 months, consecutive to Count Two.

Mr. Roberts should be given credit for time served.

B. *Special Parole Term*

Three years on each count.

Respectfully submitted,

EARL J. SILBERT
United States Attorney

DONALD E. CAMPBELL
Assistant United States Attorney
Chief, Major Crimes Division

JOSEPH F. McSORLEY
Assistant United States Attorney
Major Crimes Division
(202) 426-7389

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Government's Memorandum on Sentencing has been hand delivered to attorney for defendant, Allan M. Palmer, 1707 N Street, Northwest, Washington, D.C. 20036, this 19th day of April, 1978.

JOSEPH F. McSORLEY
Assistant United States Attorney
Major Crimes Division
426-7389

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v. Criminal No. 75-619

WINFIELD L. ROBERTS,
Defendant. *SENTENCING*

TRANSCRIPT OF PROCEEDINGS

Washington, D.C.
April 21, 1978

The above-entitled matter came on for hearing in open court at 9:35 o'clock a.m , before:

THE HONORABLE JOHN H. PRATT,
United States District Judge.

APPEARANCES:

On behalf of the Government:

JOSEPH F. McSORLEY, ESQUIRE,
Assistant United States Attorney.

On behalf of the defendant:

ALLAN M. PALMER, ESQUIRE

[2] **PROCEEDINGS**

DEPUTY CLERK: United States of America versus Winfield L. Roberts, Criminal Number 75-619. Mr. McSorley for the Government, Mr. Palmer for the defendant.

THE COURT: Mr. Palmer, do you or Mr. Roberts have anything you wish to say before sentence is imposed?

MR. PALMER: Yes, I would, Your Honor. I guess Your Honor knows normally I don't usually say too much at sentencing procedures, which is my practice. In this case I have some comments to make, however.

Now, initially we filed a motion as to whether consecutive or concurrent sentences in the matter should be imposed, and Mr. McSorley filed a pleading in the matter, also. I would like to first address myself to that question to begin with, if the Court deems it necessary.

THE COURT: You filed a motion for us to recuse from sentencing, or in the alternative to make the sentences concurrent, and you indicated that you would not press your motion to recuse if we made these sentences concurrent.

MR. PALMER: That's correct, Your Honor.

THE COURT: Well, we are not committing ourselves. It seems to me the matter of our recusal was taken care of on your petition for writ of mandamus, but I will hear from you on the matter of consecutive versus concurrent sentences.

MR. PALMER: Yes, Your Honor. The case we cited was [3] Fuller versus United States, which speaks about the need to prevent injustice when essentially it

is a single course of conduct which may be prosecuted as more than one offense, under more than one statutory provision. Such injustice is obviated by the Court imposing consecutive sentences.

Now, in this case, at the time we took the plea we made it clear that the two counts, two and five, were part–

THE COURT: They were overt acts in the conspiracy.

MR. PALMER: Yes sir. And our point is that the conspiracy is the major crime. Conspiracy is basically a conversation between two or more, whatever, and–

THE COURT: Whether or not the substantive offenses were ever committed.

MR. PALMER: That's true. And what we're saying is that these conversations breed life into the conspiracy, and without the phone count you don't really have it. And under the rationale of the Fuller case we think it would be appropriate to follow that rule.

Let's say you have 30 phone calls pursuant to a conspiracy. We're saying that you can't impose 120 years, as a matter of law, for phone calls, but 15 years for the main crime. I think it doesn't flow, and that's why the rule as announced in Fuller would apply to this case.

Secondly, the Government cited Blockberger, which was consecutive sentences under '70 statutes, that was the [4] Jones-Miller and Harrison Act of some time ago, and at the time when Justice Frankfurter said turn the screws tighter on narcotic agents. Since then we have the new set of statutes which are involved, particularly the one statute, the so-called phone statute.

THE COURT: Well, in Blockberger the man was charged with separate offenses under the Harrison Act.

MR. PALMER: The Harrison and the Jones-Miller; the Packaging and Stamp Act, as Your Honor recalls from years ago.

THE COURT: I remember.

MR. PALMER: And the other one–

THE COURT: Forty-seven-o-four.

MR. PALMER: Right, those two statutes.

Aside from the legal argument, Your Honor has a lot of experience in criminal cases, more than I do–I have a fair amount, also. I think it fair to say in my experience that when you have a plea on two counts such as this, Judges uniformly, in my experience at least, give concurrent sentences as a matter of course. In fact I know of no case in this courthouse, and I think Mr. McSorley and Mr. Connor can corroborate this if I am in error, or contradict it, in which a judge of this Court ever gave consecutive sentences for two phone counts. In fact the case that I had once, Ramsey v. U.S., which went to the Supreme Court, Judge Smith, there too on several phone counts, gave concurrent sentences. I have checked all [5] the advance sheets, and I don't know how many dozens of cases I've read, including the Federal Reporter. I have found no cases, as a matter of fact, in which any federal judge has ever given consecutive sentences for two or more phone counts.

I think based on that, based on the policy or usual procedure in this courthouse, we think it only fair, both under the law and the fact, that concurrent sentences be imposed, and I sincerely urge that.

All right. Now, without getting into that issue, the question of sentencing now comes up, and I really

want to get into this a bit because of the Government's now famous allocution in the matter. We know that during the course of this investigation there was this phone tap directed at Boo Thornton for a couple of weeks. As a result of that I believe six search warrants were executed for gambling and narcotics as a result of Mr. Thornton's activities, people arrested, et cetera. At that time no one knew Winfield Roberts from anybody else.

During the course of the investigation, I think on three occasions a green Jaguar was seen in the vicinity. The girl that owned it, Cecilia Payne, came in and said, "Yes, it's my car, I loan it to my boyfriend. He's sitting outside." "Who's the boyfriend?" "Winfield Roberts."

The Government attorney and the other policemen were there, and there was a bit of disbelief over their good fortune. [6] In any event Winfield Roberts comes in. Mr. Roberts made a statement to the police at the time.

Now, during the conversations alleged between this man and Thornton, the term "street" and "half street" were used relative to narcotics. All right. They asked Mr. Winfield Roberts about it, and he said, "Yes". I have a copy of his statement, which was given to me by Mr. McSorley. They asked him if he knew what was meant by the term "street" and "half street", because it was on the tap, and he said that "street" meant a $100 bag, and "half street" meant a $50 bag. He stated that when Boo was short on drugs he would make these deliveries to Boo in the amounts of 50 and $100 bags.

The target, Mr. Thornton, was indicted for gambling, I think, and narcotic violations, which he

pled to some and the Government dismissed as to others. Mr. McSorley files his well-known allocution. I don't know if Judge Corcoran might have overreacted to it or what, but in any event he placed Mr. Thornton, the target, on probation in the matter.

Then we get here to Mr. Roberts. His case comes to Court, they indicate to him "If you testify against Thornton, or help us with who gave you the drugs, whatever, we'll go light on you." He says, "I wasn't that involved in it," he refuses. He winds up with a substantial sentence, which he, Mr. Roberts, was somewhat surprised at, considering the course of events. [7] When the Government says Mr. Roberts was Boo's supplier, et cetera, I think you have to look at that in the context of $100, $50. The man obviously, in my experience, was a runner for somebody. He did these things not as a head of any organization or the main supplier. It is clear to me, Your Honor, in this thing he was, for the 100 or $50, whatever, giving to Mr. Thronton for his personal use, and his statement was corroborated by what? By the fact that at the time of the search warrant, at Mr. Thornton's residence, what do they find? No drugs, really, some bottle-top cookers, syringes, whatever, indicia, indications of narcotics usage, just as he indicated. So I think this had to be taken into context, Your Honor.

Now, the defendant has served almost two years in Atlanta. Now, it is easy to say here, two years, three years, four years, but I think it is something to consider that night and day for two years this man has been sitting in a jail in Atlanta, a federal penitentiary, and that is a very serious thing that weighs on his mind. Since he has been released in this case, Your Honor, I think it is fair to say, I don't know how many times he

has been calling me, but he doesn't go out at night, he has been looking for a job. But as Your Honor can imagine, when someone knows he had a prior sentence, when they know he is coming up for sentencing again, it is very difficult for someone to say oh, sure, you're going [8] to be sentenced in two weeks, I'll give you a job, sure.

We got an indication on Monday from Mr. Pendergraph that he could have a job. I submitted that to Your Honor's chambers. I saw Mr. Connor yesterday, Your Honor, indicating that the job is available.

I think in the context of this case, I think if Your Honor would agree that concurrent time could be served, he has already served over half of it, spent many a day in Atlanta thinking about what happened. It is not a case where the man has served no time and is saying to Your Honor, do us a favor and put the man on probation and he will straighten up. This man has faced jail for almost two years in a maximum security penitentiary, Your Honor.

THE COURT: How much did he serve in connection with the hold-up of the bank back in '67?

MR. PALMER: At that time how long was he incarcerated?

THE COURT: Yes.

MR. PALMER: Five and a half years, Your Honor.

THE COURT: He was on parole when this matter arose.

MR. PALMER: I believe so.

THE COURT: I notice one of the matters you submitted yesterday was a letter from Alzona J. Davis, Director of Lorton Prisoner College Program, in which he says that he has known Mr. Roberts for the past

three years, and has found him to be quite cooperative as a student.

[9] Is Alzona J. Davis connected with Atlanta, even though she's at Lorton?

THE DEFENDANT: No. This was prior to me going to Atlanta.

THE COURT: During the past three years you were not a student of Alzona Davis, were you?

THE DEFENDANT: Yes, I was a student up until my incarceration.

MR. PALMER: It sounds like she used inappropriate language. We all know where he was for the last two years.

THE COURT: Also the letter from Pendergraph that he had been accepted as a counselor in the Free School for the District of Columbia.

MR. PALMER: Yes, Your Honor. As I say, I can't remember the time when I asked this Court for a probationary sentence, based on the facts. I don't think I have ever done it in a lot of cases, but I think it is really warranted in this case, based on what has happened, what he has gone through. It is a case where he came out, his girlfriend put up bond money, and you know I'm not really getting compensated in this matter. He is living with her because he can't afford to live anywhere else. He has opportunity for employment. And I would even cite a case to Your Honor, in which Your Honor in not dissimilar circumstances–

THE COURT: Are you talking about Bubble Eyes Miles?

[10] MR. PALMER: No, no, Your Honor, Nine years ago Charles Maynard was convicted of a serious shooting offense.

THE COURT: Gueory was the victim.

MR. PALMER: Yes. Your Honor gave him six to 18 years. He was in jail about two and a half years. The case was reversed on a legal point, came back, Maynard pled to five counts. I happened to check the record, and Your Honor placed him on probation after a term of incarceration. Since that time Mr. Maynard has not been in any trouble. I understand he is doing well in the community, he has a legitimate business he is running.

Mr. Roberts has impressed me as someone who is really scared now. This two years in Atlanta, or less than two years, has really affected him, Your Honor. And if we're wrong, if he doesn't shape up, or do what he's supposed to do, you can put him in jail, and there would be no problem with that. Mr. Connor would be on him. Mr. Connor I have known for many years, he is an excellent probation officer, as Your Honor well knows. I think in this circumstance I am really asking Your Honor to do this for us based on these facts, and I think it is really warranted in this case, truthfully.

Thank you.

THE COURT: Mr. Roberts, is there anything you want to say?

[11] THE DEFENDANT: Only I'm glad that this is coming down to–we're getting ready to resolve this, and I would like to go on and get into my life, into the future, with the counseling that I have been accepted at, and get away from this, if you can see it possible.

THE COURT: Mr. McSorley.

MR. MC SORLEY: Your Honor, I would like to reply to some of Mr. Palmer's remarks.

The Government in this case, because we had filed previously a very lengthy allocution, felt no need

to supplement it with any extended pleadings. Consequently we filed only a two-page document with our sentencing recommendation that the Court impose consecutive sentences, on the basis of his factual pleas of guilty to two counts of using a telephone to facilitate a violation of the Controlled Substances Act.

In short, we have asked Your Honor to impose sentences of 16 to 48 months on each count, consecutively, which would mean, of course, a total of 30 to 96 months. Because the defendant has already served 21 months in prison, and would get credit for time served, the net result, if the Court were to accept our recommendation, would be that the defendant, if he goes back to a federal institution, would have to serve 11 months from today, generally speaking, before he becomes parole eligible.

This sentence that we're asking for is much less [12] severe than the one the Court imposed on him two years ago when it meted out a sentence of four years to 15 years. There the minimum time he would have had to serve was 48 months. In the instant case if the Court were to adopt our recommendation because of the time served it would be 11. So it would come out to be practically 16 months less time that he would end up serving if the sentence of two years ago were to be compared with the sentence we ask the Court to impose today.

Your Honor, Mr. Palmer has more or less found that the Government, by asking for consecutive sentences, is going against a rule of general usage, of customary practice in this courthouse. To some extent that is correct, because generally speaking in the pleas that I have handled in cases like this over the years, I haven't always been as harsh in asking for a particular

sentence as I am in this case, and I would like to explain why the Government has taken this reason, so as not to appear as a Simon Legree.

Many, many months ago when this case first began and we had no idea of the identity of who it was who was using that green Jaguar automobile to ferry narcotics about the city, we subpoenaed the owner in, and that turned out to be Cecelia Payne, Mr. Roberts' girlfriend. She came in and she confirmed in fact that she was the owner, and the only person she ever let drive that car was her boyfriend, whose name was Winfield, and she told us as a matter of fact he was standing right outside [13] my office in the corridor waiting for her.

I dispatched an officer to ask him to come in. Right then and there, not knowing the full import of the case, not knowing how deeply he was involved, the Government made an offer to solicit his cooperation in the case, because at that time we thought that Charles "Boo" Thornton, whom we did know, was a much more major figure in narcotics trafficking in this city than was Mr. Roberts. As events later transpired we were shown to be wrong, but we didn't know that at the time.

We solicited Mr. Roberts' cooperation to testify in the Grand Jury and at trial against Mr. Thornton. We promised him that the nature and extent of his cooperation would be made known. Suffice it to say what we offered him was a plea bargain on a silver platter, from which he would have emerged perhaps with some jail time, but with certainly a plea offer to a much less serious offense than what has ultimately transpired in the case.

Thereafter he began to cooperate, as Mr. Palmer noted. He told us what the terms "street" and "half street" meant. He told us how he delivered drugs in his girlfriend's Jaguar to Mr. Thornton. He told us a number of things which incriminated him. But when we asked him to go a step further and identify the person or persons from whom he was getting the drugs, and the location, and to lay out the conspiracy and identify other co-conspirators who were involved with them, [14] he balked.

At that point, despite repeated entreaties to secure his cooperation to go that extra step, he adamantly refused. And of course what resulted was an indictment charging him with conspiracy, and only five telephone counts, though there were a maximum of 13 calls we could have indicted him for.

Throughout the long process that has occurred from June of 1975 when he first came into my office, up to today, he still has refused to cooperate.

So as we stand here today, as a prosecutor I am not in a position as I would be in many cases, in dealing with defendants like Mr. Roberts, and cases like this involving drugs, to come to the Court, and say, Your Honor, we would ask you to take into account some extenuating and mitigating circumstances, that the defendant has cooperated by providing us with certain information. He has stonewalled it.

So we find it somewhat ironic for counsel to plead on Mr. Roberts' behalf, and to ask for probation, when a defendant over a course of many, many years, knowing what he faces, and knowing that we desired the information, still refuses to disclose it.

Mr. Roberts is 33 years old. He did this, from

what we're able to discern, that is deliver drugs on call in a Jaguar automobile, worth many thousands of dollars and titled in his girlfriend's name, for only one interest, avarice, greed, [15] money.

When this case arose way back in 1975 and the end of 1974, he was unmarried, had no children to support, no house payments to make, he lived with his girlfriend. The lease was in her name, the car was in her name. He had been unemployed for many years prior to 1975. He had been unemployed for many years since he had gotten out of Lorton. And yet, Your Honor, the life style that he was leading, the place where he was living, the car he was driving, the clothes he was wearing, the fact that he was going to Federal City College as a student, these things, Your Honor, instead of being taken into account as extenuating and mitigating circumstances, we think are appropriately to be considered as circumstances enhancing the seriousness of the offense and seriousness of the offender. It is not a defendant coming before the Court like Valjean in the Victor Hugo novel Les Miserables, where he stole bread because he had to eat. He did that for that reason. When Mr. Roberts had an opportunity to get a deal on very good circumstances, he threw it up in our face.

More than that, Your Honor, he is not a novice offender, he is not a neophyte. In 1968 in this courthourse he was charged in a 15 count indictment with multiple counts of bank robbery, and he went to trial and was convicted of all the counts which were preferred against him: UUV, one count; federal bank robbery, five counts; local bank robbery, [16] five counts. And he was sentenced to one to five years on the UUV,

and five to 15 on the bank robbery charges. And as the Court has heard, he served five and a half years at Lorton, and then he gets out.

Does he lead a law abiding life then? Is there anything today to make the Court or anyone else come to a reasonable conclusion that this man, with this background, is more likely to be law abiding from today forward than he was when he got out of Lorton five and a half years ago?

Your Honor, when you take into account the seriousness of this offense, and we do regard it as a serious offense, where he delivered heroin on call, where he himself was not an addict, where he had been unemployed, where he was a young, strong, employable, healthy human being, where he refused to assist the Government and thereby brought down on his head charges much more severe than would have been brought down, it's the Government's feeling that the appropriate sentence in this case is as we suggested.

Assuming the Court were to impose what we're asking, it is far less severe than what the Court imposed two years ago, and there have been, to counsel's way of thinking, no changed circumstances to support Mr. Palmer's recommendation for probation. We think that our recommendation, taking into account the offense, the Government efforts to have him cooperate, the lack of extenuating and mitigating circumstances, [17] is an appropriate one, and therefore we would ask the Court to impose it.

THE COURT: Do you want to make a response, Mr. Palmer?

MR. PALMER: Yes, sir. The Government, it seems to me, is pretty well agreed that Mr. Roberts was

essentially an errand boy in the matter, and they are really mad at him because–

THE COURT: I don't think they say that at all.

MR. PALMER: Well, insofar as the evidence is concerned, they have him delivering to Mr. Thornton drugs on three occasions, $100, $50, whatever, street, half street, that's the evidence. And the Government is indicating that they are mad at Mr. Roberts', they are seeking to get all this time because he didn't cooperate with them, and apparently that's what they wanted. He didn't do it, therefore he deserves to get the brunt of the time in this case, even though the target in the investigation, Mr. Thornton, got probation. And they are saying essentially, it seems, well, we've got this fellow, so let's get what we can from him. I think that's the thrust of the Government's argument.

Now, on the other point, the Government came and talked about the first sentence that Your Honor imposed. That was one of the very reasons we had filed these recusal motions, because it is difficult, as the Second Circuit said, for a judge [18] once to have sentenced somebody, which we did cite the Maynard case which Your Honor did change that, but the Second Circuit Chief Judge Kaufman said once the judge has sentenced somebody it is tough to get it out of their mind and change the structure. Here we have a different type of plea.

The Government is arguing to Your Honor that very thing that we sought to avoid. They are saying Your Honor did this before, you gave him this amount of time, and now looking in this context it will be different, but have that firmly in your mind. So they are impressing Your Honor with the very point we

sought to avoid. And I am sure, Your Honor, or I hope Your Honor will avoid that very argument, which is the basis of the recusal motion, not to be trapped into something Your Honor did before and bound by it, because the circumstances have changed now. Mr. Roberts is in a changed position, and I'll tell you why. Mr. McSorley says things haven't changed. I think they have changed dramatically, in the sense that as I indicated we are not here on behalf of a suppliant saying, Your Honor, give this man another break, maybe he has committed another offense and has done wrong, but put him on probation. This man has actually served almost two years in a federal penitentiary. Atlanta is a maximum security prison. And I think in these circumstances he is really, to me, very frightened, and hasn't been going out at night, is seeking to straighten up his life. I think to send him back now [19] would do more harm than good.

If he does mess up Mr. Coonor and us will be back here, and Your Honor can impose what you want to, and I think under the circumstances, under all the facts in this case, looking at the broad view, we don't think we're being unreasonable.

Thank you.

THE COURT: Mr. Roberts, we have considered your case very carefully. We have noted again you were on parole from a bank robbery conviction, which you have had prior involvement with the law. In this case you were clearly a dealer, but you had an opportunity and failed to cooperate with the Government. Accordingly, it is the judgment of the Court that on each of these two counts you be sentenced to a term of one to four years, that those counts be consecutive, and in

addition that there shall be a three-year term of special parole. We are not imposing a fine.

Thank you.

MR. PLAMER: Can I ask you this, Your Honor?

THE COURT: What's that?

MR. PALMER: So the term is two to eight that you have imposed, I believe.

THE COURT: What's that?

MR. PALMER: One to four and one to four, consecutive, you said.

[20] THE COURT: That's right. But a single one to three special parole term, and no fine.

MR. PALMER: Now, Your Honor, if we're correct in our proposition that a concurrent sentence is proper as a matter of law, he would be eligible for parole now.

THE COURT: Yes. And under my sentence he will be eligible for parole next December.

MR. PALMER: Well, would Your Honor consider, while the issue is being decided, setting an appeal bond, because if we're right–

THE COURT: No. If you're right it merely means he would be eligible for parole. He may also have proceedings regarding a parole violation, and nothing has been pursued on it, for what reason I don't know. So Mr. Roberts is eligible for parole in this particular case, under a different sentence, but it doesn't conclude the matter as to what the Parole Board will do in connection with his violation, which they have not noticed for hearing yet.

MR. PALMER: What I'm saying, I'm just looking at this case. though. If we are correct, then he

would be eligible now for parole.

THE COURT: I am not going to set a bond. Thank you, Mr. Palmer.

(Whereupon, hearing in the above-entitled matter was concluded at 10:00 o:clock a.m.)

[CAPTION OMITTED IN PRINTING]

STATEMENT OF REASONS FOR DENIAL OF BOND PENDING APPEAL

Pursuant to Rule 9(b), Federal Rules of Appellate Procedure, this Statement of Reasons is entered in conjunction with the Court's denial of defendant's motion for bond pending appeal.

On March 20, 1978, defendant Roberts entered a factual plea of guilty to two counts of unlawful use of the telephone to further the distribution of heroin, 21 U.S.C. §843(b). The plea came after the denial of defendant's motions to suppress identification testimony and to recuse. On April 21, 1978, Defendant was sentenced on each count to a term of from one to four years, and a special parole term of three years, the sentences to run consecutively and to be served in a federal institution. In its allocution filed before sentencing, the Government urged the imposition of the maximum penalty on the basis of defendant's prior criminal record and his culpability as supplier of an extensive heroin distribution network. Defendant's prior criminal record as an adult is as follows:

6/29/62 Washington, D.C.	Petit Larceny	ISS, probation 1 year
6/13/65 Washington, D.C.	Drunk, Disorderly, Housebreaking, Petit Larceny	All nolle prossed
11/22/66	Robbery–Hold-up (Bank)	Count 1: 1-5 years Counts 2 to 12: 5-15 Years, all counts concurrent, Judge Matthews. 2/6/70 original sentence set aside at the direction of Court of Appeals, original sentence reimposed, but Count 2 dismissed.

At the time of sentence, defendant was on parole until 1983 for the bank robbery conviction.

The evidence of his culpability in the heroin distribution ring is equally persuasive. It consists primarily of transcripts of telephone conversations intercepted between defendant Roberts and Charles "Boo" Thornton, a codefendant herein who has pleaded guilty to one count of violating 21 U.S.C. §843(b). On the basis of these conversations, the Government concluded that defendant Roberts acted as a "supplier-wholesaler" for heroin to be transferred to Thornton, and through him to the "street pushers" who make the individual sales, and so charged. Defendant Roberts previously declined to testify against his codefendant Thornton and, despite his plea of guilty, continues to refuse to identify his own sources of supply for heroin.

On the basis of the foregoing factors, the Court has concluded that defendant's prior record, together with

the circumstances of this case, establish "reason to believe that no one or more conditions of release will reasonably assure that the [defendant] will not flee or pose a danger to any other person or to the community." 18 U.S.C. §3148. The danger to the community posed by defendant is that he might resume the narcotics distribution activity with which he was charged in five counts, two of which were the subject of his plea of guilty.* In the language of the pertinent appellate rule, the defendant has not met "[t]he burden of establishing that [he] will not flee or pose a danger to any other person or to the community." Fed. R. App. P. 9(c).

JOHN H. PRATT
United States District Judge

June 16, 1978

*See *Hunsford v. United States*, 353 F.2d 858, 860, 122 U.S. App. D.C. 320, 322 (1965) (per curiam) (every narcotics trafficker a "danger to society").

NOTATION AS TO WHERE THE RELEVANT OPINIONS AND JUDGMENTS BELOW MAY BE FOUND

1. Judgment of affirmance; Petition For a Writ of Certiorari, Appendix A. (hereinafter Pet. App.) 1a-2a
2. Amended judgment; Pet. App. 2a
3. Denial of suggestion for rehearing *en banc*, with separate statements of two judges; Pet. App. 3a-23a.